Supreme Court, U.S.
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IN THE
Supreme Court of the United States

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, Deceased; ANDREW MANIGAULT, Individually and as parents and Natural Guardians of Jelani Darren Manigault,

Petitioners,

v.

CHRISTOPHER KING; HARRY MARTINEZ; FRED WILLIAMS; JUDD PETRONE; TOWNSHIP OF PRINCETON; PRINCETON TOWNSHIP POLICE DEPARTMENT; JOHN AND JANE DOES 1-10; ABC CORP. 1-10; XYZ ENTITIES 1-10,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the District Court erred in granting summary judgment on behalf of defendants, Christopher King, Harry Martinez, Fred Williams and Judd Petrone on plaintiffs' claim under 42 U.S.C. § 1983 when material issues of fact exist as to the reasonableness of the conduct of the police officer given the decedent's mental condition.

LIST OF PARTIES

Plaintiffs: Carol Manigault, Individually and as Administratrix ad Prosequendum and General Adminstratrix of Estate of Jelani Darren Manigault, Deceased; Andrew Manigault, Individually and as Parents and Natural Guardians of Jelani Darren Manigault

Defendants: Christopher King, Harry Martinez, Fred Williams, Judd Petrone, Township of Princeton and Princeton Police Department

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OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals is unreported and appears at Appendix A. The Amended Memorandum and Order of the United States District Court District of New Jersey, No. 3-05-CV-00422 (D.N.J. Aug. 13, 2008) is unreported and appear at Appendix B.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The opinion of the Third Circuit Court of Appeals and the Judgment affirming the decision of the District Court were filed on July 13, 2009.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 42 United States Code, Section 1983.

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
> . . . .

Fourth Amendment Constitution United States

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

STATEMENT OF THE CASE

This matter arises out of a tragic set of facts involving decedent, Jelani Manigault (hereinafter referred to as "Jelani"). In the early morning hours of January 23, 2003, at the age of 24, Jelani was killed in a confrontation with several police officers from the Township of Princeton. Plaintiffs filed suit against defendants in United States District Court, District of New Jersey alleging violation of 42 U.S.C. § 1983 as well as several state claims including: Wrongful Death (First Count); Respondeat Superior (Second Count); Negligent Hiring/Training/Retention (Third Count); Survivorship action (Fourth Count); Emotional Distress/ Portee Claim (Fifth Count), and Loss of Services (Sixth Count). Defendants moved for summary judgment. Despite the evidence and facts submitted by plaintiffs in support of their claim that the actions of the defendant police officers in using deadly force were unreasonable, the District Court granted defendants' motions.

The relevant facts discovered during pre-trial discovery establish that the defendant police officers' use of deadly force under the peculiar facts and circumstances of this case violated Jelani's constitutional protections under the Fourth Amendment of the United States Constitution and violated his civil rights as guaranteed under 42 U.S.C. § 1983. The facts as presented to the District Court establish that Jelani was shot three times. The first bullet was discharged by Office King and struck Jelani in the groin/lower abdomen. The undisputed testimony of the three police officers who appeared for sworn depositions establish that Jelani had been stopped in his tracks by the bullet discharged by Officer King and had already begun to slump over when Officer Martinez discharged two bullets, one of which fatally wounded Jelani. Thus, at the time that the fatal shot was fired by Officer Martinez, there was no perceived threat to any of the defendant officers as Jelani had already been hit by a shot fired by Officer King and was, by all accounts, slumping towards the ground. Despite this uncontradicted testimony, the District Court ruled, as a mater of law, that the actions of the defendant police officers were reasonable. This factual finding was upheld by the Third Circuit Court of Appeals.

In addition to the overwhelming evidence that the first shot fired by Officer King essentially stopped any perceived threat by Jelani, the undisputed facts establish that Jelani was an emotionally disturbed individual which was evidenced by the fact that he was not wearing any shoes or jacket despite freezing temperatures, had freshly slit wrists with blood all over him as a result of trying to kill himself and had shouted

out to the police officers several minutes earlier "kill me, kill me". These facts relating to the obvious mental status of Jelani, coupled with the facts, as testified to by three of the four officers involved in the incident, as to the actions of Jelani between the time of the first shot fired by Officer King and the fatal shot fired by Officer Martinez support plaintiffs' claims that the actions of the defendant police officers were unreasonable and that the force used was excessive.

The undisputed facts also establish that the defendant officers own actions in surrounding an obviously mentally disturbed Jelani and closing in around him to within a distance of 10-12 feet in violation of police procedure, precipitated the defendant officers' use of deadly force. Both the District Court and the Third Circuit dismissed this relevant testimony and essentially ruled that it did not impact upon the alleged constitutional violations alleged by plaintiffs.

One relevant procedural issue which was completely ignored by both the District Court and the Third Circuit is the fact that Officer Martinez was not produced for sworn deposition testimony during pre-trial discovery based upon a medical report indicating that he was unable to provide deposition testimony. Thus, plaintiffs have been faced with the inability to question the Officer whose shot resulted in the death of Jelani. The key issue in this litigation is whether the use of deadly force by Officer Martinez was reasonable. The testimony of the three other officers at the scene directly contradicts the statement of Officer Martinez, a statement which has never been the subject of any cross-examination and which plaintiffs have never been given the opportunity

to challenge. This important fact was never addressed by either the District Court or the Third Circuit Court of Appeals. This, along with the issue of credibility, should have been presented to and resolved by a jury.

Despite the evidence presented by plaintiffs in opposition to defendants' Motions for Summary Judgment calling into question the reasonableness of the actions of the defendant police officers in using deadly force, the District Court granted the Motions without the benefit of oral argument by Amended Memorandum and Order dated August 13, 2008. Petitioners filed an appeal with the Third Circuit Court of Appeals pursuant to 28 U.S.C. § 1291. A three judge panel of the Third Circuit affirmed the District Court's grant of Summary Judgment on July 13, 2009. Petitioners now seek review by this Court of the dismissal of their claims under 42 U.S.C. § 1983.

REASONS FOR GRANTING THE PETITION

A. This Matter Poses A Question Of General Public Importance As It Relates To The Balancing Of The Constitutional Fourth Amendment Rights Of Mentally Distraught Individuals And A Police Officer's Obligation To Protect The Public.

This case involves an issue of gravity and general importance as it relates to the standards to be applied in pursuing and apprehending a mentally unstable person. This case presents a unique situation whereby the unreasonable actions of defendant police officers in the minutes leading up to the use of deadly force itself created the situation which resulted in the use of such

force. This case highlights the necessity for police training in how to pursue and apprehend an obviously mentally distraught individual so as not to escalate a situation which in turn prompts the "perceived need" to use deadly force. The balancing of an individual's Fourth Amendment Constitutional protection with the need for police officers to protect the public is certainly a matter of public importance and warrants the granting of this Petition.

B. The District Court And Third Circuit's Holdings Were A Miscarriage of Justice.

Numerous facts and factors do not support the rulings of both the District Court and Third Circuit. While it is acknowledged that this Court does not generally review concurrent findings of two lower Courts, this Court is not relieved of the task of examining the foundation for findings in a particular case. *Baumgartner v. United States*, 322 U.S. 665, 88 L.Ed. 1525, 64 S.Ct. 1240) (1944). Here, the findings of the Courts below as to the ultimate issue of deprivation of liberty were not based upon the facts and evidence presented. There was no doubt that when the defendant police officers first encountered the decedent, they were confronted with a mentally distraught individual. Despite freezing temperatures, Jelani was wearing only a T-shirt, sweatpants and socks (no shoes). While he was holding a knife, he had fresh wounds/slits on his own wrists. Jelani was not responding in any manner to the overlapping commands of the defendant police officers.

Despite the obvious mental condition of Jelani, the defendant police officers surrounded Jelani and closed

in on him to a distance of between 10 and 12 feet, contrary to the police department's policy and procedure of maintaining a distance of at least 21 feet from a suspect. Such actions undoubtedly precipitated the alleged perceived need for defendant police officers use of deadly force.

The actions of the defendant police officers in this action and the lower Court's preclusion of presenting these facts as to the fact-finder, the jury, have significant implications as to the broader issue of the need to review this type of matter so as to ensure that the constitutional guarantees of the Fourth Amendment against unreasonable seizure for mentally distraught individuals are fully protected and balanced with the need of police officers to protect the public at large.

This matter also presents a significant issue as to procedural due process as the lower Courts' rulings were based almost exclusively upon the self-serving accounts of the defendant police officers. Defendant, Officer Martinez, the officer who discharged the deadly shot was not produced for deposition in this litigation despite plaintiffs' properly filed and served notice to appear. Plaintiffs were precluded from obtaining the sworn deposition testimony of defendant Martinez due to an application of his counsel citing medical reasons which are subject to a confidentiality agreement. The only information provided by defendant Martinez as to his recollection of the actions of that evening was provided in rather scant statement provided to police investigators following the incident. Due to the inability to obtain the sworn testimony defendant Martinez, through no fault of the plaintiffs, plaintiffs have

essentially been denied due process to pursue and establish their claim against defendant Martinez. Fundamental fairness requires that a lower court consider this type of situation in ruling upon cases involving deadly force. As noted by several Courts faced with the situation where the only eyewitness testimony is provided by the police officer defendants, "courts should not simply accept what may be self-serving account by the police officer", *Scott v. Henrich*, 39 F.3d 912, 015 (9th Cir. 1992), but instead must carefully examine all of the evidence in the record to determine whether the officers' stories are internally consistent with other known facts. *Ibid.* citing *Hopkins v. Andaya*, 958 F.2d 881, 885-88 (9th Cir. 1992). Essentially, the court must "look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence could convince a rational fact finder that the officer acted unreasonably." *Scott, supra* 39 F.3d 915.

Here, the matter is even more compelling as the plaintiffs have been precluded from deposing the actual defendant whose shot resulted in the death of Jelani. In essence, plaintiffs have been denied their fundamental right to obtain the sworn testimony of the defendant officer who fired the deadly shot.

CONCLUSION

For all of the foregoing reasons, petitioners respectfully request that the Supreme Court grant review of this matter.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED JULY 13, 2009

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 08-3810

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, Deceased; ANDREW MANIGAULT, Individually and as parents and Natural Guardians of Jelani Darren Manigault,

Appellants

v.

CHRISTOPHER KING; HARRY MARTINEZ; FRED WILLIAMS; JUDD PETRONE; TOWNSHIP OF PRINCETON; PRINCETON TOWNSHIP POLICE DEPARTMENT; JOHN AND JANE DOES 1-10; ABC CORP. 1-10; XYZ ENTITIES 1-10.

Appeal from the United States District Court for the District of New Jersey
(D.C. Civil Action No. 3-05-cv-00422)
District Judge: Honorable Anne E. Thompson.

Submitted Under Third Circuit LAR 34.1(a)
July 10, 2009

Appendix A

Before: SLOVITER, AMBRO, and JORDAN, *Circuit Judges.*

(Opinion Filed July 13, 2009)

OPINION

AMBRO, *Circuit Judge.*

In this tragic case, Princeton Township Police Officers fatally shot Jelani Manigault while attempting to arrest him. Manigault's parents, Carol and Andrew, brought this action under 42 U.S.C. § 1983, asserting that the officers used excessive force and approached their son in a manner that violated his Fourth Amendment rights. The District Court granted summary judgment in favor of the officers, ruling that they were entitled to qualified immunity. We affirm.

I.

In the early hours of January 23, 2003, the Princeton Township Police received an emergency call from Mrs. Martha Sword. She informed them that an intruder had entered her home and was attacking her husband and brother. The intruder, Manigault, had crashed his car into a tree on the Sword's property and entered to their home when Mr. Sword opened the door to see if Manigault needed help. Once inside, Manigault, who was wearing no jacket or shoes, grabbed a knife from the kitchen and began stabbing Mr. Sword. Mrs. Sword's brother, Robert Sullivan, came to Mr. Sword's aid and

helped him force Manigault outside. Manigault, however, reentered the house, regained control of the knife, and began slitting his wrists. At this point, Sullivan forced him back outside and secured the doors.

Officers Judd Petrone and Harry Martinez arrived at the driveway of the Sword's home about the same time that Sullivan managed to lock Manigault outside. After inspecting Manigault's crashed car, the officers began walking toward the Sword's home. Meanwhile, Officers Fred Williams and Christopher King arrived and followed Petrone and Martinez up the Sword's driveway.

Officer Martinez was the first to spot Manigault. He ordered him to "drop the knife," and pursued him into the Sword's densely wooded yard. The other officers hurried to join Martinez and encircle Manigault. Relying on their flashlights for light, the officers continuously commanded Manigault, who was covered in blood, to drop his knife.

After some time, Manigault turned his back to the officers. Thinking that he was submitting, Officers Martinez and Petrone began to approach him. As they closed to within fifteen feet, however, Manigault spun around, faced Officer King, and stated, "Go ahead and kill me" or "You're going to have to kill me." He then charged King with the knife. Backing up, King tripped on a tree stump and fell to the ground. As Manigault continued his charge, King fired his gun.

Hit with King's bullet, Manigault bent from the waist and turned toward Martinez with knife in hand. At this point, King was prepared to fire more shots but lost sight of Manigault, and Petrone was prevented from firing because Martinez was in his line-of-fire. Martinez then fired two quick shots at "almost the exact same time" as King's shot. One of these shots killed Manigault.

Manigault's parents filed this suit against the officers, Township, and other entities, alleging, among other things, a § 1983 claim stemming from the officers' asserted use of excessive force and unreasonable actions. The officers moved for summary judgment, arguing that they were entitled to qualified immunity. The District Court granted the motion. *See Manigault v. King*, No. 05-0422, 2008 WL 3887609, at *5-6 (D.N.J. Aug. 21, 2008). The Manigaults appealed.

II.

The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291.

Our review of the District Court's grant of summary judgment is plenary, "but we must view the facts in the light most favorable to the non-moving party." *Fontroy v. Beard*, 559 F.3d 173, 177 (3d Cir. 2009). Summary judgment is appropriate when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

Appendix A

III.

Manigault's parents argue that we should vacate the District Court's grant of summary judgment because the Township officers used deadly force and unreasonably approached their son in violation of his Fourth Amendment rights.[1] The officers respond that they are entitled to summary judgment based on qualified immunity because their actions were objectively reasonable under the circumstances.

Qualified immunity shields government officials from civil damages liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Under *Saucier v. Katz*, we typically resolve qualified immunity claims under a two-step test, deciding (1) whether facts alleged or shown make out the violation of a constitutional right, and (2) if so, whether that right was clearly established at the time of the defendant's misconduct. 533 U.S. 194, 201 (2001). The Supreme Court, however, held in *Pearson v. Callahan* that "courts of appeals should be permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at

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1. On appeal, the Manigaults do not press any of their previously raised state claims or their § 1983 claim against the Township and other entities. These claims are thus waived. *See Kopec v. Tate*, 361 F.3d 772, 775 n. 5 (3d Cir. 2004).

hand." *Pearson*, __ U.S. __, 129 S.Ct. 808, 818 (2009). The District Court's decision, rendered before *Pearson*, addressed the first step-whether the Township officers' use of deadly force was unconstitutional. We see no reason, post- *Pearson*, to alter that approach here.

A police officer's use of deadly force is permissible only if it is objectively reasonable under the circumstances. *See Graham v. Connor*, 490 U.S. 386, 399 (1989). Assessing the reasonableness of an officer's use of deadly force requires careful attention to "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, . . . whether he is actively resisting arrest or attempting to evade arrest by flight, . . . the duration of the officer's action, . . . the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." *Couden v. Duffy*, 446 F.3d 483, 496-97 (3d Cir.2006) (internal citations omitted).

Viewing the facts in the light most favorable to the Manigaults, we conclude, as the District Court did, that the Township officers' use of deadly force was objectively reasonable under the circumstances. At the time he was shot, Manigault had stabbed a man and invaded a home. He was covered in blood, armed with a deadly weapon, did not respond to commands, and was in the process of lunging at an officer who had fallen to the ground. To be sure, Manigault's lack of a jacket or shoes and slit wrists may have given the officers some indication that he was mentally unwell, but given the darkness of the scene and brief time period in which it unfolded, these

indicators could not control the officers' actions. Moreover, the fact that Manigault bent from the waist and turned after King's bullet struck him did not make it unreasonable for Martinez to fire his weapon at a nearly simultaneous time. Thus, no genuine issues of material fact exist over whether the officers used deadly force in an objectively unreasonable manner.

In addition, the Manigaults' claim that the officers approached their son in a way that violated his Fourth Amendment rights must fail. Although the officers were trained to maintain a distance of at least 21 feet when facing a suspect carrying a knife, their abandonment of this protocol cannot form the basis for a remedy under § 1983 or deprive them of qualified immunity. *See Collins v.. City of Harker Heights,* 503 U.S. 115, 119 (1992) (holding that § 1983 does not provide a remedy if there is no violation of federal law); *Davis v. Scherer,* 468 U.S. 183, 194 (1984) (noting that officials do not lose qualified immunity where they violate administrative directives). Furthermore, under the circumstances, it was reasonable for Martinez and Petrone to approach Manigault, who had turned his back on them and appeared to be submitting to their commands.

* * *

For these reasons, we affirm the District Court's grant of summary judgment.

APPENDIX B — AMENDED MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY FILED AUGUST 21, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 05-0422 (AET)

CAROL MANIGAULT, Individually and as Administratix ad Prosequendum and General Administratix of the Estate of Jelani Darren Manigault, deceased, et al.,

Plaintiffs,

v.

CHRISTOPHER KING, et al.,

Defendants.

AMENDED MEMORANDUM & ORDER

THOMPSON, District Judge.

This matter is before the Court upon Defendants Christopher King, Fred Williams, Judd Petrone, Township of Princeton, and Princeton Township Police Department's[1] Motion for Summary Judgment, and

1. The Court notes that, in New Jersey, a municipal police department is not distinct from the municipality, N.J. Stat. Ann

(Cont'd)

Defendant Harry Martinez's (collectively, "Defendants") Motion for Summary Judgment. The Court has decided these Motions based upon the submissions of the parties and without oral argument pursuant to Fed.R.Civ.P. 78. For the reasons set forth below, Defendants' Motions are granted.

BACKGROUND

Plaintiffs Carol Manigault and Andrew Manigault bring this action following the shooting death of their son, Jelani Manigault ("Decedent"), by Princeton Township Police Officers Christopher King, Patrolman Harry Martinez, Sergeant Judd Petrone, and Fred Williams (the "Officer Defendants"). In addition, Plaintiff Carol Manigault brings claims in her capacity as Administratix of Decedent's Estate. Plaintiff Carol Manigault is a resident of New Jersey, while Plaintiff Andrew Manigault is a resident of South Carolina. The Officer Defendants are residents of New Jersey. Defendant Township of Princeton ("Princeton") is a municipal corporation organized under New Jersey law, and is located in Mercer County, New Jersey. Defendant Princeton employs the Officer Defendants.

(Cont'd)

§ 40A:14-118, and, therefore, the Princeton Township Police Department is not a proper defendant here. Thus, all claims against Princeton Township Police Department are dismissed. *See Bonenberger v. Plymouth Twp.*, 132 F.3d 20, 25 n. 4 (3d Cir.1997) (treating the municipality and its police department as a single entity for purposes of claims brought under 42 U.S.C. § 1983).

Appendix B

On January 23, 2003, Decedent was shot to death by the Officer Defendants. Plaintiffs had been concerned about erratic behavior exhibited by Decedent in the preceding days, and, following an interview with a psychiatrist at the Princeton Medical Center the day before Decedent's death, Plaintiffs, Decedent, and Decedent's girlfriend, Jennifer Arroyo, stayed overnight in a guest cottage at Tenacre, a Christian Science facility located in Princeton. (Goldstein Cert., Ex. B (Carol Manigault Dep.), at 86:19-23; 94:18-21.)

In the early morning hours of January 23, 2003, Decedent left the guest cottage, wearing only a t-shirt and sweatpants, and no shoes, despite freezing temperatures, and refused to heed his parents' and girlfriend's attempts to prevent him from leaving. (*Id.*, at 142:9-16; 143:4-7.) Decedent drove Plaintiff Carol Manigault's car out of Tenacre, and a short while later, crashed the vehicle on Great Road. Decedent exited the car, and walked by foot to 1036 Great Road, the residence of Martha and William Sword. (Goldstein Cert., Ex. G (New Jersey Police Accident Report.)) Around 1:45 a.m., Mrs. Sword was awakened by the barking of her dogs, and heard the doorbell ring. (Goldstein Cert., Ex. J (Martha Sword Dep.) at 8:9-11 .) She and Mr. Sword went to the front door, where Mrs. Sword saw Decedent. (*Id.*, at 9:9-10.) Concerned, Mr. Sword opened the front door. Decedent pushed past Mr. Sword, and headed straight for a room known as the "mudroom," adjacent to the kitchen. (*Id.*, 9:11-21.) Decedent appeared agitated as he walked into the kitchen and began rummaging through the drawers. Decedent removed an

eight-inch knife, and came at Mr. Sword with the knife. Mrs. Sword screamed, and told her brother, Robert Sullivan, who was staying overnight as a guest, to come downstairs without getting dressed. (Defs.' Statement of Material Facts, ¶ 42.) Decedent stabbed Mr. Sword approximately fourteen times, resulting in a punctured lung, broken ribs, and knife wounds to Mr. Sword's chest, back, right arm, left shoulder, and left hand. (*Id.*, ¶ 43.) Mr. Sullivan, witnessing the stabbing, came up behind Decedent, put his right forearm around Decedent's throat, and lifted Decedent off of his feet. (*Id.*, ¶ 44.)

Mrs. Sword called 911, and informed the operator that an intruder was in their home, had stabbed her husband, and that her brother and husband were fighting back against the intruder. (*Id.*, ¶ 45.) Mr. Sullivan managed to subdue Decedent by hitting him over the head with a frying pan a couple of times, and tried to administer aid to Mr. Sword. (Goldstein Cert., Ex. K (Robert Sullivan Dep.), at 15:1-17:22.) However, Mr. Sullivan noticed that Decedent was back on his feet, in the kitchen, and had slit his own wrists. (*Id* ., at 17:4-22.) Mr. Sullivan managed to let Decedent out of the house, set the knife on the kitchen counter, and began to lock the doors to the house. However, he subsequently returned to the kitchen to discover that he had not secured the door properly, and Decedent had reentered the house, and had once again cut his wrists with the knife. Decedent then exited the home with the knife in his hand. (Defs.' Statement of Material Facts, ¶¶ 55-57.)

Appendix B

Defendant Petrone responded to a dispatch that a black male intruder had a knife and was stabbing someone inside the home at 1036 Great Road. (Goldstein Cert., Ex. L (Petrone Dep.) at 30:6-19.) On his way, he heard a second update that the intruder had been subdued on the kitchen floor. (*Id.*, at 30:24-31:4.) Defendant Petrone arrived around the same time as Defendant Martinez, and as they were trying to locate the home in the dark, Defendant Petrone was flagged by a couple who alerted him to a crashed vehicle, but knew nothing of the stabbing incident to which Defendant Petrone was responding. (Defs.' Statement of Material Facts, ¶¶ 63-65.) Defendant Martinez exited his car, and cleared the crash vehicle to ensure that no one was in there. (*Id* ., ¶ 67.) Meanwhile, Defendant Petrone received an update that the intruder was now outside the Swords' home and was coming down the driveway. (Goldstein Cert., Ex. L at 31:7-9.) Defendant Martinez began walking up the driveway, approximately thirty feet ahead of Defendant Petrone, when Defendants Williams and King arrived, having heard the same dispatch updates as Defendant Petrone. (*Id.*, Ex. L at 38:19-25; Ex. M (King Dep.) at 57:11-57:24). Defendant Williams approached the crashed vehicle.

Defendant Martinez then spotted Decedent, and started to run towards him, yelling, "Drop the knife, police. Drop the knife." Defendants Petrone and King followed in pursuit. (*Id.*, Ex. L at 39:15-18; 40:19-23; Ex. M at 63:9-18.) The Swords' yard was unkempt, with stones and trees everywhere, and was not lit. (*Id.*, Ex. M at 63:23-64:4.) When Defendant Petrone first

saw Decedent, he was approximately thirty feet away, and had illuminated Decedent with his flashlight. At this point, Defendant Petrone had drawn his gun and was holding it in his right hand. Decedent had blood on his clothing, and was holding the bloody knife with his right hand at the level of his head. (*Id.*, Ex. L at 40:16-41:6; 71:11-14; Defs.' Statement of Material Facts, ¶ 80.)

Defendant Petrone was situated to Decedent's left, and Defendant Martinez was to the right of Defendant Petrone. (Goldstein Cert., Ex. L at 41:13-16.) They continued to command Decedent to drop his knife, and, at one point, Decedent turned his back to both Defendants Petrone and Martinez. (Defs.' Statement of Material Facts, ¶ 86.) Believing that Decedent was going to obey their commands, Defendants Petrone and Martinez closed the distance to within ten to fifteen feet of Decedent in order to subdue him. (Vladyka Cert., Ex. C (Petrone Dep.) at 45:24-46:2.) Defendant King approached, and positioned himself between Defendants Petrone and Martinez. Defendant King estimated that, at this point, the officers were approximately twenty feet away from Decedent. (Goldstein Cert., Ex. M at 70:13-17.) Police officers are trained to maintain a distance of approximately twenty-one (21) feet away from a suspect with a knife, both to protect the officer's safety, and to allow the officer time to assess the threat posed by the knife, and to respond with force. (Defs.' Statement of Material Facts, ¶¶ 90-92.)

Appendix B

Instead of complying with Defendants' commands to drop his knife, Decedent turned around, and stopped, facing Defendant King. Decedent then either said, "Go ahead and kill me," or "You're going to have to kill me," and charged with the knife towards Defendant King. (Goldstein Cert., Ex. M at 72:19-25.) Defendant King began backing up, but tripped on a tree stump behind him, and fell and landed on his buttocks and lower back in a seated position. He kept his head up, and raised one of his feet, and yelled at Decedent to stop. (Defs.' Statement of Material Facts, ¶¶ 96-97.) Decedent continued moving towards Defendant King, and was approximately six feet away when Defendant King fired his gun, hitting Decedent in the pelvic region. (Goldstein Cert., Ex. M at 78:10; Defs.' Statement of Material Facts, ¶¶ 99-100.)

At this point, the parties dispute what exactly happened next. Defendant King was prepared to fire additional shots, but lost sight of Decedent after he was hit with Defendant King's bullet. (Goldstein Cert., Ex. M at 79:17-80:3.) According to Defendant King, Decedent's head lowered, and he surmised that the downward movement actually came from Decedent's waist. (Vladyka Cert., Ex. D (King Dep.) at 80:13-16; 81:13-20; 82:14-24.) After Defendant King's shot, Defendant Petrone observed Decedent turn towards Defendant Martinez, still holding the knife, but also saw that Decedent was "stopped in his tracks." (*Id.*, Ex. C at 51:14-25; 81:20-25.) Defendant Martinez then fired two quick shots in succession. One of the two shots struck

Decedent's head, and proved to be fatal. The time between Defendant King's first shot and Defendant Martinez's second and third shots was estimated to be "almost the exact same time." (*Id.*, Ex. D at 82:2-13; *see also* Ex. C at 53:13-21.) Defendant King then removed the knife from Decedent's hand, and could not discern any signs of life. (Goldstein Cert., Ex. M at 87:6-88:2.) Defendant Petrone made arrangements to secure the area, and instructed Defendant Martinez to check the situation inside the Swords' home, and told Defendant Williams to secure the end of the driveway. (Defs.' Statement of Material Facts, ¶ 106.)

While these events were unfolding, Plaintiffs and Ms. Arroyo waited at the end of the driveway. (*Id.*, ¶ 111.) Plaintiff Carol Manigault saw a body being lifted onto a gurney after emergency medical technicians arrived, and knew "in her heart of hearts" that it was her son. (Vladyka Cert., Ex. A (Carol Manigault Dep.) at 157:4-12.) However, the next morning, Plaintiffs and Ms. Arroyo went to the police station to locate their son, and Plaintiff Carol Manigault testified that she "put two and two together" and determined that her son had died when a detective told her that an African American male had been killed the previous night. (Goldstein Cert., Ex. B at 159:3-11.)

Plaintiffs filed a Complaint against Defendants alleging the following claims: (1) wrongful death; (2) respondeat superior against Defendant Princeton for the actions of its officers; (3) negligent hiring,

training, and retention against Defendant Princeton;[2] (4) survivorship; (5) negligent infliction of emotional distress; (6) loss of services; (7) violations of 42 U.S.C. § 1983, alleging that Defendants' actions constituted an unreasonable seizure and excessive force, and violated Decedent's due process and equal protection rights; and (8) Defendant Princeton acted negligently in keeping Plaintiffs away from their son after he had been shot. Defendants now move for summary judgment on all claims.

DISCUSSION

A. Standard of Review

Summary judgment is appropriate if, on the record, "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir.2000). In deciding whether summary judgment should be granted, the Court considers "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits," and construes all facts and inferences in the light most favorable to the nonmoving party. Fed.R.Civ.P. 56(c); *see also Curley v. Klem*, 298 F.3d 271, 276-77 (3d Cir.2002). To survive a

2. In their Opposition papers, Plaintiffs concede the negligent hiring claim. Accordingly, summary judgment is granted for Defendants on this count.

motion for summary judgment, a plaintiff cannot rely merely on the unsupported allegations of the complaint, and must present more than the "mere existence of a scintilla of evidence" in his favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

B. Excessive Force Claim

Defendants first argue that they are entitled to qualified immunity on Plaintiffs' § 1983 claim, because Plaintiffs cannot establish that Defendants violated Decedent's Fourth Amendment rights to be free from an unreasonable seizure and excessive force, contending that Defendants' use of deadly force against Decedent was objectively reasonable in light of the attendant circumstances of the situation they faced. Plaintiffs argue that the use of deadly force was unreasonable and excessive, because Defendants Petrone and Martinez unnecessarily created a situation where such force would have to be used by maintaining a distance of less than 21 feet between themselves and Decedent. Further, Plaintiffs contend that Defendant Martinez employed excessive force in firing two shots, including the fatal one, at Decedent, asserting that the record shows that Decedent no longer posed a threat to Defendants after he was hit by Defendant King's shot. The Court notes that Plaintiffs have not opposed Defendants' Motions on the due process and equal protection portions of their § 1983 claims, nor have Plaintiffs opposed Defendant Princeton's motion for summary judgment on the § 1983 claim. The Court has not found anything in the record

that creates a factual dispute that would warrant a denial of summary judgment on these grounds. Thus, the Court only considers the viability of Plaintiffs' Fourth Amendment claims against the Officer Defendants.

The use of excessive force by law enforcement officers constitutes an unreasonable seizure within the meaning of the Fourth Amendment. *Carswell v. Borough of Homestead*, 381 F.3d 235, 240 (3d Cir.2004). Excessive force claims are analyzed according to an objective reasonableness standard. *Sharrar*, 128 F.3d 810, 820 (3d Cir.1997). A court must consider the totality of circumstances, and factors a court may take into account include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 821-22. Also informative to the court's analysis is consideration of "the possibility that the persons subject to the police action are violent or dangerous, the duration of the action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time." *Kopec v. Tate*, 361 F.3d 772, 777 (3d Cir.2004).

Here, construing the facts in the light most favorable to Plaintiffs, the Court concludes that the Officer Defendants' actions were objectively reasonable. The Officer Defendants, responding to a 911 call that an intruder had stabbed someone inside the Swords' residence, and having received dispatch updates informing

them that the intruder had subsequently left the home, encountered Decedent in the yard of the Swords' home. It was dark, and the only light came from the Officer Defendants' flashlights. The Officer Defendants saw that Decedent's clothes were stained with blood, and that he was holding a knife in his right hand at the level of his head. Decedent apparently ignored the Officer Defendants' repeated commands that he drop his knife, and after turning his back to them, abruptly turned around and began to charge towards Defendant King. In response, Defendant King backed away, but tripped over a tree stump. Decedent continued to advance, and Defendant King fired his gun when Decedent was approximately six feet away, knife still in hand. Defendant Martinez fired both of his shots at Decedent almost instantaneously. Plaintiffs argue that Defendant Petrone's testimony established that Decedent was "frozen in his tracks" following the first shot, and, therefore, no longer posed a threat to any of the officers. However, Defendant Petrone also testified during his deposition that Decedent turned in the direction of Defendant Martinez after being struck by the first bullet, and that, in that moment, Defendant Martinez faced an armed assailant who had stabbed a homeowner, and was trying to attack his fellow officers. Further, the Court is mindful that its "recitation of these events is a discussion in slow motion of an incident that took place in a matter of seconds." *Carswell*, 381 F.3d at 243. In these circumstances, the Court cannot find that the Officer Defendants' use of force was unreasonable.

Plaintiffs also contend that Defendants Petrone and Martinez acted unreasonably by closing the gap between

Decedent and them to within ten to fifteen feet, despite being trained to maintain a distance of at least 21 feet when facing a suspect carrying a knife. This, Plaintiffs contend, created a situation where Defendants unnecessarily used deadly force in order to subdue the threat posed by Decedent. However, Defendant Petrone testified that the officers approached Decedent after he turned his back, and after the Officer Defendants had instructed him to drop his knife. The Court concludes that a reasonable officer could have construed Decedent's actions at that moment as unaggressive, and, thus, the Court does not find that Defendants Petrone and Martinez acted unreasonably in moving closer in order to attempt to subdue Decedent.

Having found no constitutional violation, the Court grants the Officer Defendants' Motions for Summary Judgment on Plaintiffs' § 1983 claim.

C. State Law Claims

Having granted summary judgment in favor of Defendants on Plaintiffs' sole federal claim, and there being no diversity jurisdiction, the Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claims. 28 U.S.C. § 1367(c) (3). Accordingly, Plaintiffs' state claims are dismissed.

D. John Doe Defendants

According to Fed.R.Civ.P. 21, "parties may be dropped . . . by order of the court . . . of its own initiative at any

stage of the action and on such terms as are just." Fed.R.Civ.P. 21. A court may drop John Doe defendants pursuant to this Rule. *See, e.g., Adams v. City of Camden*, 461 F.Supp.2d 263, 271 (D.N.J.2006) (citing cases). Therefore, the Court exercises its discretion under Fed.R.Civ.P. 21 to dismiss the John Doe defendants from this action because Plaintiffs have not identified these defendants or provided any basis of their liability with respect to the incident that gives rise to this action.

CONCLUSION

For the foregoing reasons, and for good cause shown,

IT IS on this 13th day of August, 2008,

ORDERED that Defendants Christopher King, Fred Williams, Judd Petrone, Township of Princeton, and Princeton Township Police Department's Motion for Summary Judgment is GRANTED; and it is further

ORDERED that Defendant Harry Martinez's Motion for Summary Judgment is GRANTED; and it is further

ORDERED that this case is closed.

s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.